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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/063,125	03/22/2002	Lex P. Jansen	S63.2-10399	5949
490	7590	06/23/2004		EXAMINER
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			WEBB, SARAH K	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/063,125	JANSEN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sarah K Webb	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 August 2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-24 is/are pending in the application.

4a) Of the above claim(s) 9-12, 16-19, 23 and 24 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-8, 13-15 and 20-22 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 8/8/03.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species A: tungsten-rhenium alloy (claims 1-8,15,20-22)

Species B: molybdenum alloy (claims 9-12,16-19,23,24)

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 13 and 14 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the

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record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Jonathan Grad on 6-10-04 a provisional election was made without traverse to prosecute the invention of Species A, claims 1-8,13-15, and 20-22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-12,16-19,23, and 24 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Objections***

4. Claim 5 is objected to because of the following informalities: it is an identical copy of claim 4. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,628,787 (Mayer) in view of US Patent No. 5,226,909 (Evans et al.).

Mayer discloses a stent with radiopaque properties. Mayer explains that the stent may comprise tungsten or rhenium, as they are suitable radiopaque materials (column 7, lines 7-9). Evans explains that a tungsten-rhenium alloy is suitable as a radiopaque material for medical applications (column 7, lines 38-42). It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the radiopaque stent of Mayer from a tungsten-rhenium alloy, as taught by Evans, as this is simply another material for forming a radiopaque medical device.

Regarding claim 8: Figure 1 of Mayer shows the stent has a side wall with a plurality of openings. The limitation "implant having been made from a sheet of material or from a tube" is not given patentable weight, because this is a product by process limitation. The limitation does not further limit the structure of the device. Whether a product is patentable depends on whether it is known in the art or it is obvious, and is not governed by the process by which it is made.

6. Claims 4,6,7,13-15, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer in view of Evans, as applied to claim 1 above, and further in view of "Tungsten-Rhenium Data Sheet", Rhenium Alloys, Inc., <http://www.rhenium.com/Materials/WRe/tungsten.html>.

Mayer, as modified by Evans above, includes all the limitations of claims 4,6,7,13-15, and 20-22, but fails to specify the composition of the tungsten-rhenium alloy. A data sheet provided by Rhenium Alloys, Inc. on the Internet at [www.rhenium.com](http://www.rhenium.com) (attached) lists several compositions of tungsten-rhenium alloys that are known to be suitable for medical applications. The weight percent of tungsten falls within the range of 75%-99%, and the weight percent of rhenium falls within the range of 1%-25%. Inherently, the modulus of elasticity is about 400 GPa. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the compositions of tungsten-rhenium alloy taught by Rhenium Alloys, Inc. in the modified Mayer stent, as these compositions are known to be suitable for medical applications.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent No. 5,344,426 (Lau) states that tungsten and rhenium are suitable radiopaque materials for a stent delivery catheter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah K Webb whose telephone number is (703) 605-1176. The examiner can normally be reached on Mon-Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McDermott or Shaver can be reached on (703) 308-0858. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SKW  
06/17/2004

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DAVID O. REIP  
PRIMARY EXAMINER